Supreme Court, U.S.
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No. 03-923

In the Supreme Court of the United States

ILLINOIS, PETITIONER,

v.

ROY I. CABALLES, RESPONDENT.

On Petition for a Writ of Certiorari to the Supreme Court of Illinois

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

Respondent's opposition misinterprets both the decision below and the petition itself. Respondent initially suggests (incorrectly) that the Illinois Supreme Court held that the Fourth Amendment was violated when police extended the *duration* of a traffic stop to allow a canine sniff. Opp. 4. Respondent then asks this Court to ignore the Illinois Supreme Court's actual ruling — that the police impermissibly changed the *scope* of the stop by introducing a drug-detection dog — because the Court's Fourth Amendment ruling "can be justified on the basis of the extended duration of the seizure." Opp. 10. Finally, respondent mischaracterizes the petition as suggesting that the Illinois Supreme Court held that a dog sniff was a Fourth Amendment search. Respondent's analysis of both the petition and the decision below is flawed, and he utterly fails to undermine the petition's showing that certiorari should be granted.

A. The petition establishes that the courts are deeply and intractably split over whether the Fourth Amendment requires reasonable suspicion to justify using a drug-detection dog during the course of a legitimate traffic stop. Pet. 6-7. Respondent answers in a footnote, stating that "[t]here is no basic conflict among the courts of appeal as to whether prolonging the duration of a seizure after a traffic stop violates the Fourth Amendment." Opp. 8.

That, of course, begs the question. The Illinois Supreme Court did not find a Fourth Amendment violation based upon any analysis of whether the canine sniff extended the *duration* of the stop. Rather, it held that the canine sniff impermissibly extended the *scope* of the stop. Pet. App. 4a-5a ("the police impermissibly broadened the *scope* of the traffic stop in this case into a drug investigation because there were no specific and articulable facts to support the use of a canine sniff")

(emphasis added). It is that question on which the courts have irreparably split. Pet. 6-7.

Faced with this undeniable reality, respondent suggests that the Illinois Supreme Court used the term "scope" to mean both the duration of the stop and the nature of the investigation. Opp. 4-5. That suggestion is frivolous, as shown by the very case cited by respondent in support of his position. See *People v. Cox*, 202 Ill.2d 462, 469-471, 782 N.E.2d 275, 280-281 (2002) (analyzing separately the duration and scope of the stop), cert. denied, 123 S. Ct. 2574 (2003).

Finally, respondent speculates that this is a duration case, not a scope case, because "[t]he court below may well have concluded that the officer was stalling to permit the canine unit more time to arrive." Opp. 7. There is no need to speculate about what the Illinois Supreme Court *may well* have concluded, as the court's reasoning was articulated for all to see. As noted above, the reasoning rested exclusively upon what the court viewed as the extended scope of the stop, not its (supposed) prolonged duration.

B. Contrary to respondent's suggestion (Opp. 6), the question presented here is not whether a dog sniff is a search. The Illinois Supreme Court did not hold that a dog sniff is a Fourth Amendment search. Rather, as the petition correctly noted, the court below held that a canine sniff, performed without reasonable suspicion, enlarged the scope of a routine traffic stop into a drug investigation. Pet. App. 5a.

Respondent does little to defend that holding on the merits. But even if he had, there remains the intractable split among the courts on the question presented — a split that warrants this Court's intervention.

C. Respondent argues that this case is not important because the decision below (supposedly) was based on the

duration of the stop. Opp. 12. Respondent fails to acknowledge the frequency with which police officers and courts address this issue. Pet. 9-10. He also fails to acknowledge that the use of drug-detection dogs has resulted in over 130,000 narcotics seizures worth several billions of dollars. Brief of the Illinois Association of Chiefs of Police and Major Cities Chiefs Association as *Amici Curiae*, at 5. There can be no doubt that the question presented is important and recurring.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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